



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/151086

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on September 05, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the Kenosha County Human Service Department (the agency) correctly calculated Petitioner's FoodShare allotment.

NOTE: The record was held open until September 6, 2013, to give Petitioner an opportunity to submit documentation of her medical conditions. No documentation was received by the designated deadline.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Representative
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On July 2, 2013, Petitioner completed a review for FoodShare benefits. (Exhibit 3, pg. 1)
3. On July 8, 2013, the agency sent Petitioner a notice indicating that as of August 1, 2013, her FoodShare benefits would be reduced from \$152.00 per month to \$94.00 per month. (Exhibit 3, pgs. 72-76)

4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 30, 2013. (Exhibit 1)
5. On August 8, 2013, the agency issued a \$7.00 supplement to Petitioner for August 1, 2013. (Exhibit 3, pgs. 63-64)
6. On August 8, 2013, the agency sent Petitioner a notice indicating that effective September 1, 2013, her FoodShare benefits would be increased from \$94.00 per month to \$101.00 per month.
7. Petitioner's assistance group consists of one person. (Testimony of Petitioner)
8. Petitioner's sole source of income comes from Social Security, in the amount of \$1220.90 per month. (Testimony of Petitioner)
9. Petitioner pays rent in the amount of \$178 per month, although the agency verified rent in the amount of \$187.00 per month. (Testimony of Petitioner; Testimony of Ms. Mayer)
10. Petitioner is 62 years old. (Exhibit 3, pg. 10)

DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has a member over age 60. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FSH § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH §4.1.1.*

Once a household passes the gross income test the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction –

This is currently \$149 per month, *7 CFR § 273.9(d)(1)*:

- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).*

The heating standard utility allowance (HSUA) is currently \$442 per month.

There is a cap of \$469 on the shelter cost deduction, *unless* a household has an elderly, blind or disabled member.

FSH, §§ 4.6.7.1 and 8.1.3.

The term 'disabled' is a term with a definition as to the FoodShare program:

3.8.1.1 EBD Introduction

An elderly individual is a food unit member age 60 or older.

A disabled individual is a food unit member who receives disability or blindness benefits from any of these programs: [SSA](#), [MA](#), [SSI](#) or SSI related MA, Railroad Retirement Board ([RRB](#)).
FSH, §3.8.1.1.

Petitioner contests the agency's calculation of her medical expenses. According to Ms. Mayer, the agency allowed out-of-pocket prescription expenses from Walgreens (\$11.22 per month), expenses related to chiropractic adjustments and counseling sessions provided by Lifeorce Chiropractic (\$257.83 per month), prescriptions for over-the-counter medications, Audophilus (sp?), Mucinex and vitamins submitted by Petitioner (\$72.24 per month), as well as her Medicaid part B premium (\$104.90 per month). These expenses worked out to be \$467.85 per month. *See Exhibit 3*

Petitioner did not dispute the agency's calculation of the expenses that it did allow. However, Petitioner contends that expenses for various nutritional supplements (that are not vitamins), herbs, oils and special foods should have been allowed because she has various complex medical conditions. Petitioner also contends that expenses related to various medical tests performed by Diagnos-Techs, Inc. should have been allowed, as well as her YMCA fees.

With regard to the nutritional supplements, these expenses cannot be allowed, because Petitioner's doctor did not include them in the prescription he provided. Per *FSH §4.6.4.1(4)*, over-the-counter medication can only be allowed, "when approved by a licensed practitioner or other qualified health professional."

With regard to the expenses related to herbs, oils and special foods, these are not considered allowable medical expenses. *FSH §4.6.4.2 (7)*, does NOT allow as a medical expense, "special diets whether or not the diet is related to a medical condition".

With regard to the testing performed by Diagnos-Techs, Ms. Mayer indicated that the agency excluded this expense, because the bill listed milk and eggs. However, there appears to be a misunderstanding. The milk and eggs are not listed as grocery items. Given the itemization on the bill, it appears Petitioner was being tested for hormone levels and food allergies/intolerances. The FoodShare Wisconsin Handbook, does not specifically exclude medical expenses related to medical testing, and one would think that costs related to medical testing/diagnosis would be included as an allowable expense under *FSH §4.6.4.1(1)*, which does allow medical expenses related to medical care provided by a state licensed practitioner or other qualified health professional. The total expense from Diagnos-Techs is \$180, which divided by 12 months comes out to \$15.00 per month. (See Exhibit 3, pg. 18)

With regard to the YMCA fees, petitioner did not provide any current documentation to show that she is still a member. Further, even if Petitioner could show that she is a current member of the YMCA, the record does not contain any information showing that Petitioner is receiving "swim therapy" at the YMCA from a qualified health professional. As such, per *FSH §4.6.4.1* it is not an allowable expense.

In summary, Petitioner's total monthly medical expenses are \$467.85 (amount initially calculated by the agency) + \$15.00 per month (amount from Dianos-Techs) = \$482.84.

Thus, Petitioner's excess medical expenses are $\$482.85 - \$35.00 = \$447.85$.

Applying all of the foregoing information to Petitioner we have the following net income calculation:

Gross Income	\$1220.90	Rent	\$187.00
No Earned Income Deduction		HSU	\$444.00
Standard Deduction	-\$149.00	50% Net income	-\$312.03
Medical Expenses exceeding \$35	-\$447.85		
No Dependent Care Expenses		Excess Shelter Expense	\$318.97
Net Income	\$624.05		
Excess Shelter Expense	\$318.97		
Net Income	\$305.08		

Individuals, in a household of one, with a net income of \$305.08 qualify for a FoodShare allotment of \$108.00 per month. *FSH §8.1.2*.

Petitioner expressed a great deal of dissatisfaction with the manner in which the agency has, over time, decided which of her medical expenses are allowable. It would behoove Petitioner to carefully review the portion of the policy handbook that the agency provided to her and to have her doctor provide a detailed list of what, exactly, he is

prescribing for her. Petitioner should then provide that detailed prescription to the agency along with receipts/bills to support her expenses.

CONCLUSIONS OF LAW

The agency did not correctly calculate Petitioner's FoodShare allotment.

THEREFORE, it is

ORDERED

That the agency issue FoodShare benefits to Petitioner in the amount of \$108.00 per month, effective August 1, 2013, if Petitioner is otherwise qualified for those benefits. The agency shall issue to Petitioner a new notice of decision. The agency shall take all administrative steps necessary to complete these tasks within ten days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of September, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 11, 2013.

Kenosha County Human Service Department
Division of Health Care Access and Accountability